

1744. *November 27.* M'LAUHLANS *against* M'DOUGAL.

No 218.

FOUND competent for a defender to propone improbation of the execution of the summons, notwithstanding his having proponed peremptory defences.

Fol. Dic. v. 3. p. 314. Kilkerran, (IMPROBATION.) No 5. p. 283.

* * D. Falconer reports this case :

1744. *Nov. 28.* JOHN M'DOUGAL of Dunnolick, being pursued by John and Patrick M'Lauchlans, creditors of his father, as representing him on the passive titles by possession of his estate, defended himself on his father's having been forfeited, and that he possessed by tolerance from the Duke of Argyle the superior. THE LORD ORDINARY, "in respect the possession was acknowledged, and that the defender did not shew a legal title by which he possessed, found the libel relevant, and the debt instructed by the writ produced, and the passive titles acknowledged, as said is, and decerned."

Afterwards the defender offering improbation of the execution of the summons; which, if he could take out of the way, prescription was run, the LORD ORDINARY, on the 16th instant, upon advice with the Lords, "found, That notwithstanding the peremptory defences, yet it was still competent for him to propone improbation against the execution quarrelled;" and to this the LORDS this day adhered.

Act. H. Home.

Alt. A. M'Dowal.

Clerk, Gibson.

D. Falc. v. 1. p. 100.

1753. *December 21.* The KING'S ADVOCATE *against* CHARLES STEWART.

WHEN a man is suspected of forgery, and application is made to the Court of Session for a warrant to incarcerate him till he be tried, it has been customary before a formal libel or complaint is exhibited against him, to examine him in Court, and to oblige him to answer proper interrogatories. See upon this matter *l. 22. C. Ad legem Cornel. de fals.* and M'Kenzie's *Criminal*, page 140. where it is said, that *in crimine falsi* the Court of Session has gone so far as to prove by the defender's oath.

A complaint for forgery being exhibited against Cameron of Fassefern, charging him with contriving a forged deed in his own favours, and claiming upon the same in a court of justice; and against Charles Stewart, notary public, charging him with being the forger, or at least with being accessory to the forgery; the question occurred with regard to the latter, whether it was competent to examine him after the complaint or libel was laid against him. Elchies gave his opinion, that though the defender's oath ought not to be demanded *ob metum perjurii*, the same objection lies not against an examination. It occurred

No 219.

Whether it be competent to examine a man accused of forgery, after the complaint is laid against him.